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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/905,721	05/28/2002	James Veril Stout	P1382	9355

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EXAMINER

SWENSON, BRIAN L

ART UNIT PAPER NUMBER

3618

DATE MAILED: 06/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/905,721

Applicant(s)

STOUT, JAMES VERIL

Examiner

Brian Swenson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 May 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 5/28/02.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Claim Objections

1. Claim 5 objected to because of the following informalities: claim 5 improperly depends from itself, "The hitch-mountable cart of claim 5", the examiner has taken and examined claim 5 to depend from claim 3 which provides support for the limitation of an "axle", as is believed to be applicant's intent.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 6 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 6 recites the limitation "the axle" in line 2 of the claim. Claim 14 recites the limitation "the mechanical jack" in line 2 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 2, 7-10 and 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,593,840 issued to Chown.

Chown Teaches in Figures 1-9 and respective portions of the specification of a receiver hitch-mountable utility cart and method (see particularly Col. 4, lines 15-61 and Col. 5 and 6) for connecting the hitch-mountable utility cart to a vehicle comprising; a support frame (4) for supporting a payload (1; Figure 1); a hitch arm (12,21) rigidly attached to the support frame; a wheelbase assembly with two freely rotatable wheels (6) for transporting the cart with the wheels on the ground; and a user-operable translation mechanism (see Figure 1 where the translating mechanism consists of hand screw (9) which can translate within bracket 8 for fixing the position of the wheelbase assembly) connecting the wheelbase to the frame, enabling the frame to be raised and locked (Figure 4) and lowered (Figure 1) relative to the wheelbase, such that the cart, with the support frame in an uppermost position, may be aligned and connected to the receiver hitch bar of the over-the-road vehicle, and the wheels may then be retracted to carry the cart entirely on the receiver hitch bar (Figure 3) for secure transport.

Chown discloses the claimed invention except, Chown shows a ball and socket hitch arm shaped to engage a ball hitch on a vehicle, not a receiver hitch. Receiver hitches are well known in the hitching and vehicle art. It would have been obvious to one having ordinary skill in the art at the time of invention to use a receiver hitch in place of the ball and socket hitch. One would be motivated to replace the ball and socket hitch with a receiver hitch to allow the hitch bar to be inserted longitudinally within the receiver portion of the hitch assembly allowing the load to be brought closer to vehicle in accord with Chown's objective taught in Col. 1, lines 47-55 of reducing the

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cantilever stresses in the connection between the load carrying unit and vehicle by shorting the distance between the load carrying unit and vehicle.

In regards to claim 7, Chown discloses the hitch mounted cart can be used as a hand-truck when not coupled to the vehicle, see Col. 4 lines 15-50 where handle (29) is used to move the cart.

4. Claims 3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chown, as applied to claim 1 above in view of U.S. Patent No. 5,161,814 issued to Walker.

Chown discloses the claimed invention except for showing an axle supporting the two wheels.

Walker in Figures 1-6 and respective portions of the specification teaches of a trailerable cart with an adjustable wheel assembly including teaching of a drop-down axle (23) connecting two adjustable wheel assemblies. It would have been obvious to one having ordinary skill in the art at the time of invention to include a drop-down axle connecting the two wheel assemblies, as taught by Walker in the invention taught by Chown. One would be motivated to include the an axle to allow the wheels to be raised an lowered in unison from one side of the cart, incorporating a drop-down axle will allow the wheels to be raised without the interfering with the bottom of the cart.

5. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chown, in view of Walker, as applied to claims 1 and 3 above, and in further view of U.S. Patent No. 6,213,491 issued to Southard, Jr.

Chown as modified by Walker disclose the claimed invention except for teaching of extending the length of the axle member.

Southard, Jr. in Figures 1-6 teaches of an axle member (64; see Figure 4) for a trailerable vehicle that can be adjusted axially by the placement of bolts (72). It would have been obvious to one having ordinary skill in the art at the time of invention to include an adjustable axle, as taught by Southard, Jr., in the invention taught by Chown as modified by Walker to allow the wheelbase to be extended providing the advantage of increasing the stability of the cart.

6. Claim 6, 11 and 14-16 as best understood are rejected under 35 U.S.C. 103(a) as being unpatentable over Chown, as applied to claim 1 above in view of U.S. Patent No. 4,978,104 issued to Gipson, Jr.

Chown as modified discloses the claimed invention except for teaching a jack for providing assistance for raising and lowering the wheelbase.

Gipson, Jr. teaches of a mechanical jack assembly (Figures 1-6-6) for raising and lowering the axle of a wheel assembly (26). The jack assembly includes a quick-release spring-loaded lever (98) operated retractable member for engaging a half-nut (138) for raising and lowering the jack assembly. It would have been obvious to one having ordinary skill in the art at the time of invention to include a jack, as taught by Gipson, Jr., in the invention taught by Chown to provide the advantage of assisting in raising and lowering the wheels of the receiver hitch-mountable utility cart.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 6,113,130 issued to Sauice teaches of trailer with a platform that can be pivoted.

U.S. Patent No. 6,254,117 issued to Cross teaches of a trailer of an ATV that attaches to a receiver hitch and can be folded to a non-use position.

U.S. Patent No. 5,738,261 issued to Dula teaches of a hitch for raising and lowering a hand truck.

U.S. Patent No. 6,607,345 issued to McElhany teaches of a lift system for an ATV.

U.S. Patent No. 6,164,896 issued to Cummins teaches of a lift system for a trash collector, mounted on the hitch of a vehicle.

U.S. Patent No. 4,666,359 issued to Parr teaches of a towable dolly including means for lifting an item.

U.S. Patent No. 5,584,639 issued to Walker, Jr. teaches of a towable trailer for lifting pallets.

U.S. Patent No. 6,739,604 issued to Cassoni teaches of a motorized golf cart mounted to the rear of a vehicle.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Swenson whose telephone number is (703) 305-8163. The examiner can normally be reached on M-F 9-5.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Johnson can be reached on (703) 308-0885. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Brian Swenson
Examiner
Art Unit 3618

BSL 5/27/04
bls


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5/27/04